



JUDICIARY OF
ENGLAND AND WALES

THE ASSOCIATION OF DISTRICT JUDGES

RESPONSE TO CONSULTATION PAPER CP01/08

**ON ADMINISTRATION AND ENFORCEMENT RESTRICTION ORDERS:
SETTING THE PARAMETERS**

The Association represents all District Judges in the County Courts and District Registries of the High Court in England and Wales.

District Judges are responsible for case management of most civil claims issued in England and Wales, and deal with the vast majority of issues arising in connection with enforcement of judgments and with court-based management of debt. It seems to us that any parameters set for the operation of the new AO and the ERO schemes should reflect a balance between the need for creditors to be able to recover debts owed and the provision of a degree of protection to those who are unable to pay their debts. We agree with the proposal that wherever possible the parameters under the two schemes should be the same, for the sake of consistency.

Q.1: Do you agree that the types of debt detailed in paragraph 25 should be excluded?

We agree that debts that are not provable as bankruptcy debts should be excluded from both schemes and also agree that rent arrears where the debtor remains in possession of the relevant property, and council tax should be excluded for the reasons given. We had never envisaged that the schemes would apply to future liabilities of any kind.

Q.2: Do you think that other types of debt should be excluded from the schemes?

No

Q.3: Do you agree that there should not be any exceptions from this restriction?

We agree that there is no need for any specific exception to the prohibition on taking enforcement action whilst an AO or ERO is in force, given the right to apply to the court for permission to take such action.

Q.4: Do you agree that debtors should have a minimum of £50 p.m. of surplus income before being allowed to enter the AO scheme?

This requirement reflects a significant change from the current AO scheme, but we accept the reasons given in paragraphs 35 to 38 for a change in focus to those who can maintain payments at a worthwhile level. We think it reasonable to fix the qualifying surplus at £50 per month.

Q.5: Do you think that a minimum repayment rate of £50 p.m. should be introduced?

Q.6: Do you think that all surplus income should be repaid?

We think a requirement that debtors should pay the whole of the excess above their assessed income needs (even where the excess only just reaches the minimum) may well operate as a disincentive to increase income where that possibility exists. We would prefer to see a requirement to pay a proportion of the excess; one approach might be a percentage, say 80 or 90 percent, whatever the level of surplus; better might be a sliding scale such as payment of say 10% of the first £10 of the surplus, 20% of the next £10 etc.

Q.7: Considering the provision we intend to make in the order, are annual updates of information adequate?

Yes. Any greater frequency would impose too great an administrative burden.

Q.8: Do you agree that debtors should not have to notify the court when sales are expected to raise less than the asset limit for the DRO scheme?

Yes. Any greater requirement would impose an excessive burden on the debtor.

Q.9: Do you think that goods should be exempted on grounds other than value?

Given the exceptions already provided for in sections 112M(5) and 117J(5), we agree that value should be the only other basis for exemption.

Q.10: Do you agree that 21 days is sufficient notice of the intention to dispose of goods?

Yes.

Q.11: Do you agree with the proposals for calculating debts?

Yes. The method proposed is already in place under the current AO procedure and appears to work satisfactorily.

Q.12: Is it considered that any group is/ groups are represented disproportionately amongst debtors? In particular, is there any evidence to suggest that these proposals will discriminate on the grounds of race and ethnicity, gender or disability status?

Whilst there are suggestions that in some instances, some groups appear to be represented amongst debtors disproportionately, we are not aware of any clear evidence to suggest that this is in fact the case. As to the second, we are not aware of any such evidence.

March 2008

For and on behalf of the Association

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